

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-201

EDMOND TORELLI

APPELLANT

V.

NAGA GORIPARTHI

APPELLEE

Opinion Delivered OCTOBER 8, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV2004-4739-17]

HONORABLE MACKIE M. PIERCE,
JUDGE

AFFIRMED

SARAH J. HEFFLEY, Judge

After a jury awarded him \$0 in damages, appellant Edmond Torelli brings this appeal challenging the propriety of the Pulaski County Circuit Court’s order granting separate trials in his personal-injury case against two defendants. We affirm.

Torelli was involved in two separate traffic accidents in January 2004. The first accident involved appellee Naga Goriparthi allegedly making a U-turn in front of Torelli and occurred on January 13, 2004. The second accident occurred some two weeks later, on January 28, when Cynthia Wehrli allegedly struck Torelli’s vehicle in a parking lot. Torelli filed a single suit encompassing both accidents in Pulaski County Circuit Court on April 19, 2004. The complaint sought damages against both defendants and alleged that joinder was proper because there were “common questions of fact among them regarding the proximate cause of [Torelli’s] injuries and damages.” Both defendants answered and denied the material allegations of the complaint, including that joinder was proper. Wehrli’s answer also raised issues of comparative

fault.

Wehrli filed a motion for separate trials and supporting brief in which she argued that, in order for joinder to be proper, there must be a common question of law or fact and that Torelli's right to relief must arise from the same occurrence. She argued that the two separate accidents were not part of the "same occurrence" within the meaning of Ark. R. Civ. P. 20. Torelli responded by filing his own brief in which he argued that Rule 20 allowed for joinder where there was a "series of transactions or occurrences" and common questions of law or fact. He asserted that the two separate accidents qualified as a series of occurrences. He also asserted that he would be prejudiced if separate trials were ordered because the jury could hear references to the other accident and infer that the other case had settled and, therefore, be less inclined to award him the damages to which he would otherwise be entitled. Without holding a hearing, the circuit court issued a letter opinion granting Wehrli's motion. The court allowed Torelli to pick the order in which the claims were tried.

Torelli's claim against Goriparthi was the first to be tried. Although the jury found for Torelli, it assessed his damages as \$0. After Torelli filed his notice of appeal on his claim against Goriparthi, he settled his claim against Wehrli. This court dismissed Torelli's first appeal for lack of a final order.¹ The circuit court entered an amended order disposing of both of Torelli's claims. This appeal followed.

For reversal, Torelli argues that the circuit court erred in ordering separate trials and requests a new trial. A circuit court's order granting separate trials is a matter within the court's

¹*Torelli v. Goriparthi*, No. CA06-1066 (Ark. App. Sept. 19, 2007).

discretion and will not be reversed absent a showing of abuse of that discretion. *Pennington v. Harvest Foods, Inc.*, 326 Ark. 704, 934 S.W.2d 485 (1996).

We first address Goriparthi's suggestion that this case is moot because of Torelli's settlement with Wehrli. We note that the dismissal as to Wehrli was without prejudice. On the record before us, we are not entirely convinced that the issue is moot. *See Crooked Creek, III, Inc. v. City of Greenwood*, 352 Ark. 465, 101 S.W.3d 829 (2003). Turning to the merits, we hold that the circuit court did not abuse its discretion in ordering separate trials.

The relevant rules are Rule 20 and Rule 42 of the Arkansas Rules of Civil Procedure. The pertinent part of Rule 20 on permissive joinder of parties reads:

(a) Permissive Joinder. . . . All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. . . .

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him and may order separate trials or make other orders to prevent delay or prejudice.

Rule 42(b), pertaining to separate trials, reads:

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or any number of claims, cross-claims, counterclaims, third-party claims, or issues.

The primary purpose of the rules is to advance judicial economy so long as the parties are not prejudiced. *Pennington, supra*.

In cases such as this involving separate accidents, the critical point lies in applying the

phrase “arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.” Here, we agree with Torelli’s assertion that the two accidents within fifteen days of each other can constitute a series of occurrences within the meaning of Rule 20. However, that is not sufficient for joinder to be proper because Rule 20 is in the conjunctive and requires, in addition to the series of occurrences, a question of fact or law common to all defendants.

Torelli’s complaint alleged that he was injured in two separate and unrelated accidents occurring fifteen days apart. He did not specify the injuries he received. There are no allegations that Torelli suffered a single, indivisible injury from the two accidents or that the injuries suffered in the accident with Goriparthi were aggravated by the accident with Wehrli. Without such allegations, Torelli’s claims against Goriparthi and Wehrli are essentially distinct and several because no question of fact or law common to both of the defendants is shown. *See Denzel v. County of Cook*, 382 N.E.2d 578 (Ill. Ct. App. 1978). This is the key distinction between the present case and the cases from other jurisdictions Torelli cites in his brief where joinder was allowed. Therefore, we cannot say that the circuit court abused its discretion in ordering separate trials where joinder under Rule 20 was not proper in the first instance.

Affirmed.

HART and GLADWIN, JJ., agree.